

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**MENDOTA INSURANCE COMPANY,**

**Respondent,**

**v.**

**OLIVIA WARE By and Through Her Uncle and Next Friend JACKSON WARE,**

**Appellant.**

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**DOCKET NUMBER WD72766**

**Date: May 24, 2011**

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Appeal from:  
Jackson County Circuit Court  
The Honorable Michael W. Manners, Judge

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Appellate Judges:  
Division One: Gary D. Witt, P.J., James E. Welsh and Alok Ahuja, JJ.

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Attorneys:  
Stephen R. Bough and Matthew B. Heath, Kansas City, MO, for appellant.  
Ellen J. Brooke, St. Louis, MO, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

MENDOTA INSURANCE COMPANY

**Respondent,**

**v.**

**OLIVIA WARE By and Through Her Uncle and Next Friend JACKSON WARE,**  
**Appellant.**

WD72766

Jackson County

Before Division One: Gary D. Witt, P.J., James E. Welsh and Alok Ahuja, JJ.

Edward Washington, appellant Olivia Ware's father, was a passenger in a vehicle owned and operated by Charles Johnson. Johnson's vehicle was involved in an accident. Washington died as a result of injuries sustained in the accident.

Ware filed a wrongful-death lawsuit against Johnson to recover damages for Washington's death. Following a bench trial the circuit court entered a judgment against Johnson for \$175,000 in compensatory damages.

Mendota had issued an automobile insurance policy to Johnson which was in force on the date of the accident. Ware demanded that Mendota pay the judgment against Johnson. Mendota refused to pay more than \$25,000, which it contended was the Policy's per-person limit of liability for bodily injury claims. Ware argued to the contrary that, due to a typographical error in the Policy's Declarations, the Policy was ambiguous and should be interpreted as having *no* effective limits of liability. According to Ware, Mendota was therefore responsible for the entirety of her \$175,000 judgment against Johnson, Mendota's insured.

Mendota filed this declaratory judgment action, asking the circuit court to determine that the Policy's limit of liability for bodily injury claims is \$25,000 per person. The trial court granted summary judgment to Mendota, finding that the limit of liability for Washington's death is \$25,000. Ware appeals.

**AFFIRMED.**

Division One holds:

The Policy's Declarations page contains a letter "A" next to the words "Property Damage," even though "Property Damage" coverage is identified as "Coverage B" in the Policy's other terms. Ware argues that this mis-typed letter "A" creates an ambiguity in the Policy, requiring that it be interpreted in her favor as imposing *no* monetary limit on the liability coverage Johnson purchased from Mendota.

“Language is ambiguous if it is reasonably open to different constructions.” *Burns v. Smith*, 303 S.W.3d 505, 509 (Mo. banc 2010). Ware’s briefing refers to the mis-typed letter “A” as a “blatant error” on the Declarations page. We agree. Based on the other provisions of the Policy, which consistently refer to the Policy’s property damage coverage as “Coverage B,” it would be obvious to any reasonable reader of the Policy that the letter “A” appearing next to the words “Property Damage” on the Declarations page is erroneous. Because the mis-typed letter “A” was an obvious typographical error, it is not “reasonably open to different constructions,” and does not create an ambiguity in the Policy. The rule that ambiguities be construed in favor of the insured has no application here.

Ware would not be entitled to prevail even if the Policy were construed to be ambiguous. “Where ‘there is ambiguity, insureds are entitled to a resolution of that ambiguity consistent with their *objective* and *reasonable* expectations as to what coverage would be provided.’” *Burns*, 303 S.W.3d at 512 (citation omitted). Ware’s proposed reading – under which the Policy would contain *no* effective limits of liability for bodily injury claims – is inconsistent with an insured’s objective and reasonable expectations. References to finite, monetary limits of liability pervade the Policy. By arguing that the Policy contains no such limits, Ware’s arguments would cloud the meaning of multiple provisions of the Policy, and render others wholly meaningless or ineffective. Because it would do violence to multiple policy provisions, we would reject Ware’s proposed interpretation of the Policy even if we agreed that an ambiguity existed.

Opinion by: Alok Ahuja, Judge

May 24, 2011

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